

REMARKS

The present Amendment is in response to the Final Rejection mailed January 7, 2008, in connection with the present case. Claims 1, 2, and 25 have been amended herein, claim 24 has been canceled herein, and claims 7-22 were previously canceled. Therefore, claims 1-6, 23, and 25-32 remain currently pending in the present case. Because of the finality of the Official Action, the present Amendment is being submitted in connection with a Request for Continued Examination ("RCE"). In light of the submission of this RCE, entry of the present amendment is respectfully requested. The following sets forth Applicants' remarks pertaining to the outstanding action and the currently pending claims.

In the action, the Examiner first rejected claims 1-5 and 27-32 provisionally on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 15 of co-pending Application Serial No. 10/781,504 ("the '504 Application") in view of U.S. Patent No. 6,113,637 to Gill et al. ("Gill"). Also accompanying the present amendment is a terminal disclaimer disclaiming the '504 Application. Because the present case and the '504 Application are commonly owned, and because the terminal disclaimer has been executed by an attorney of record of the present case, Applicants respectfully request removal of the obviousness-type double-patenting rejection of claims 1-5 and 27-32.

Further in the Action, the Examiner rejected claim 24 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Although Applicants disagree with the Examiner's contentions, in the hopes of expediting prosecution, Applicants have canceled such claim in the present invention. Additionally, the Examiner objected to claim 26 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter, which Applicant will regard as the invention. The Examiner stated that the limitation "at least one of the first and second spaced apart surfaces of the ledge members" of such claim does not have sufficient antecedent basis. In the present Amendment,

claim 25 (upon which claim 26 depends) has been amended to recite the ledge members having first and second spaced apart surfaces. Applicants respectfully submit that dependent claim 26 now includes proper antecedent basis because of this amendment, and request removal of the § 112 rejection of the claim.

Finally, with respect to the substance of the Official Action, the Examiner set forth the following rejections:

- o claims 1 and 23 under 35 U.S.C. § 102(b) as being anticipated by *Gill*;
- o claims 2-6 and 25-30 under 35 U.S.C. § 103(a) as being obvious over *Gill*;
- o claims 31 and 32 under 35 U.S.C. § 103(a) as being obvious over the combination of *Gill* and U.S. Patent No. 6,632,091 to *Cise et al.* ("*Cise*");
- o and claim 24 under 35 U.S.C. § 103(a) as being obvious over the combination of *Gill* and U.S. Application Publication No. 2002/0045901 to *Wagener* ("*Wagner*").

Essentially, it is the Examiner's position that *Gill* anticipates certain of the claims, obviates certain of the claims by itself, or obviates certain of the other claims when combined with other references. Most notable among the various rejections is the rejection of sole independent claim 1 as being anticipated by *Gill*.

In the present Amendment, Applicants have amended independent claim 1 to more specifically capture that which they believe to be tantamount to the invention of the present case. Mainly, independent claim 1 has been amended to more specifically claim the subject matter shown in Figs. 14a through 18b of the present application, i.e., a multiple-level implant for replacement of two adjacent vertebral discs. This is something not taught by *Gill*. Where *Gill* does in fact teach an artificial disc replacement device, it does not contemplate

the use of multiple artificial disc replacement devices similar to the ones disclosed therein. As can be seen in Fig. 1 of *Gill*, insertion and fixation of the implant taught therein into a single intervertebral disc space requires that flanges of the device be fixed to an exterior surface of the vertebral bodies. These flanges extend significantly toward the adjacent disc spaces flanking the one being replaced. That figure clearly shows that other of the devices taught in *Gill* could not be placed in the adjacent vertebral discs because its flange would conflict with the flange of the adjacent device.

This is contrary to the invention disclosed in Figs. 14a through 18b of the present case, where first and second members are provided for cooperation with first and second intermediate members respectively that include flanges that will cooperate with one another or otherwise not conflict with one another. Specifically, these intermediate members include flanges which are offset with respect to a midline of the spinal column so that both flanges can be placed against a single vertebral body without the flanges contacting or conflicting with one another.

Independent claim 1, as well as dependent claim 2, has been amended herein in order to more specifically require that the first intermediate flange be offset to one side of the midline of the spinal column. Specifically, that flange has been required, in its entirety, to be offset with respect to the midline of the spinal column. This is far different from *Gill*, which only teaches a flange which extends across the midline of the spinal column, and therefore would create the conflicts noted above in attempting to replace adjacent vertebral disc space. Thus, Applicants respectfully submit that independent claim 1 is patentably distinct from *Gill*.

Although each dependent claim has not been discussed specifically herein, Applicants note that such claims are allowable based solely upon their proper dependence from

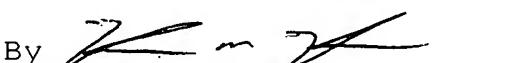
allowable independent claim 1. Therefore, in light of all of the above, Applicants respectfully request allowance of each and every one of the currently pending claims.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: March 17, 2008

Respectfully submitted,

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